

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 138

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PRESIDENTIAL PRIMARY ELECTIONS; AMENDING SECTION 34-102, IDAHO  
2 CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES; AMENDING  
3 SECTION 34-106, IDAHO CODE, TO REMOVE A PROVISION REGARDING PRESI-  
4 DENTIAL PRIMARIES, TO PROVIDE A CORRECT CODE REFERENCE, AND TO MAKE  
5 TECHNICAL CORRECTIONS; AMENDING SECTION 34-411A, IDAHO CODE, TO RE-  
6 MOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES AND TO MAKE TECHNICAL  
7 CORRECTIONS; AMENDING SECTION 34-601, IDAHO CODE, TO REMOVE A PROVI-  
8 SION REGARDING PRESIDENTIAL PRIMARIES; AMENDING SECTION 34-713, IDAHO  
9 CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRIMARIES AND TO MAKE  
10 TECHNICAL CORRECTIONS; REPEALING SECTION 34-731, IDAHO CODE, RELATING  
11 TO THE PRESIDENTIAL PRIMARY; REPEALING SECTION 34-732, IDAHO CODE, RE-  
12 LATING TO CANDIDATES; REPEALING SECTION 34-733, IDAHO CODE, RELATING  
13 TO REMOVAL FROM BALLOT; REPEALING SECTION 34-734, IDAHO CODE, RELATING  
14 TO VOTING; REPEALING SECTION 34-735, IDAHO CODE, RELATING TO PRESIDEN-  
15 TIAL PRIMARY RESULTS; REPEALING SECTION 34-736, IDAHO CODE, RELATING TO  
16 DELEGATES TO THE NATIONAL CONVENTION; REPEALING SECTION 34-737, IDAHO  
17 CODE, RELATING TO CONDUCT OF ELECTION; REPEALING SECTION 34-738, IDAHO  
18 CODE, RELATING TO COSTS OF A PRESIDENTIAL PRIMARY; AMENDING SECTION  
19 34-904A, IDAHO CODE, TO REMOVE PROVISIONS REGARDING PRESIDENTIAL PRI-  
20 MARIES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 34-1203A,  
21 IDAHO CODE, TO REMOVE A PROVISION REGARDING PRESIDENTIAL PRIMARIES;  
22 AMENDING SECTION 34-1205, IDAHO CODE, TO REMOVE A PROVISION REGARDING  
23 A PRESIDENTIAL PRIMARY; AND DECLARING AN EMERGENCY AND PROVIDING AN  
24 EFFECTIVE DATE.  
25

26 Be It Enacted by the Legislature of the State of Idaho:

27 SECTION 1. That Section 34-102, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 34-102. "PRIMARY ELECTION" DEFINED -- PURPOSES. ~~(1)~~ "Primary elec-  
30 tion" means an election held for the purpose of nominating persons as  
31 candidates of political parties for election to offices, and for the purpose  
32 of electing persons as members of the controlling committees of political  
33 parties. Primary elections, ~~with the exception of presidential primaries,~~  
34 shall be held on the third Tuesday of May in each even-numbered year.

35 ~~(2) "Presidential primary" means an election held for the purpose of~~  
36 ~~allowing voters to express their choice of candidate for nomination by a po-~~  
37 ~~litical party for president of the United States. A presidential primary~~  
38 ~~shall be held on the second Tuesday in March in each presidential election~~  
39 ~~year.~~

40 SECTION 2. That Section 34-106, Idaho Code, be, and the same is hereby  
41 amended to read as follows:

1 34-106. LIMITATION UPON ELECTIONS. On and after January 1, 2011,  
 2 notwithstanding any other provisions of the law to the contrary, there shall  
 3 be no more than two (2) elections conducted in any county in any calendar  
 4 year, except as provided in this section or section ~~34-219~~ 34-220, Idaho  
 5 Code, and except that elections to fill vacancies in the United States house  
 6 of representatives shall be held as provided in the governor's proclamation.

7 (1) The dates on which elections may be conducted are:

8 (a) The third Tuesday in May of each year; and

9 (b) The Tuesday following the first Monday in November of each year.

10 (c) In addition to the elections specified in paragraphs (a) and (b) of  
 11 this subsection and subsection (7) of this section, an emergency elec-  
 12 tion may be called upon motion of the governing board of a political sub-  
 13 division. An emergency exists when there is a great public calamity,  
 14 such as an extraordinary fire, flood, storm, epidemic, or other disas-  
 15 ter, or ~~if when~~ it is necessary to do emergency work to prepare for a na-  
 16 tional or local defense, ~~or it is necessary to do emergency work~~ to safe-  
 17 guard life, health or property.

18 ~~(d) In addition to the elections specified elsewhere in this section,  
 19 a presidential primary shall be held on the second Tuesday in March in  
 20 each presidential election year. Presidential primaries shall be held  
 21 separately from other primary elections, which shall be held on the  
 22 third Tuesday in May even in presidential election years.~~

23 (2) Candidates for office elected in May shall take office on the date  
 24 specified in the certificate of election but not more than sixty (60) days  
 25 following the election.

26 (3) Candidates for office elected in November shall take office as pro-  
 27 vided in the constitution, ~~or~~ on January 1 next succeeding the November elec-  
 28 tion.

29 (4) The governing board of each political subdivision subject to the  
 30 provisions of this section, which, prior to January 1, 2011, conducted an  
 31 election for members of that governing board on a date other than a date per-  
 32 mitted in subsection (1) of this section, shall establish as the election  
 33 date for that political subdivision the date authorized in subsection (1) of  
 34 this section ~~which that~~ falls nearest the date on which elections were previ-  
 35 ously conducted, unless another date is established by law.

36 (5) The secretary of state is authorized to provide such assistance as  
 37 necessary, ~~and~~ to prescribe any needed rules or interpretations for the con-  
 38 duct of election authorized under the provisions of this section.

39 (6) Water districts governed by chapter 6, title 42, Idaho Code, are ex-  
 40 empt from the provisions of this section.

41 (7) Community colleges governed by chapter 21, title 33, Idaho Code,  
 42 and school districts are subject to the limitations specified in subsection  
 43 (1) of this section, except that school districts may also hold an election  
 44 on the second Tuesday in March of each year and on the last Tuesday in August  
 45 of each year on bonded indebtedness and property tax levy questions.

46 (8) A city initiative or referendum election shall be held on the Tues-  
 47 day following the first Monday in November of odd-numbered years. A county  
 48 initiative or referendum election or a bond, levy and any other ballot ques-  
 49 tion elections conducted by any political subdivision shall be held on the  
 50 nearest date authorized in subsection (1) of this section ~~which that~~ falls

1 more than sixty (60) days after the clerk of the political subdivision orders  
 2 that such election shall be held in May or November of even-numbered years  
 3 or more than fifty (50) days after the order for all other elections, unless  
 4 otherwise provided by law. Ballot language for any question to be placed on  
 5 the ballot shall be submitted to the county clerk at least sixty (60) days be-  
 6 fore an election held in May or November of even-numbered years and at least  
 7 fifty (50) days before all other elections.

8 (9) Recall elections may be held on any of the four (4) dates authorized  
 9 in subsections (1) and (7) of this section that fall more than forty-five  
 10 (45) days after the clerk of the political subdivision orders that such elec-  
 11 tion shall be held.

12 (10) Irrigation districts governed by title 43, Idaho Code, are subject  
 13 to the limitations specified in subsection (1) of this section, except that  
 14 irrigation districts may also hold an election on the first Tuesday in Febru-  
 15 ary of each year and on the first Tuesday in August of each year on questions  
 16 required to be voted upon by title 43, Idaho Code.

17 SECTION 3. That Section 34-411A, Idaho Code, be, and the same is hereby  
 18 amended to read as follows:

19 34-411A. PRIMARY ELECTIONS -- CHANGING PARTY AFFILIATION -- UNAFFIL-  
 20 IATED ELECTORS. (1) For a primary election, ~~including a presidential pri-~~  
 21 ~~mary election,~~ an elector may change such elector's political party affili-  
 22 ation or become "unaffiliated" by filing a signed form with the county clerk  
 23 no later than the last day a candidate may file for partisan political office  
 24 prior to such primary election, as provided for in section 34-704 ~~or 34-732,~~  
 25 Idaho Code. An "unaffiliated" elector may affiliate with the party of the  
 26 elector's choice by filing a signed form up to and including election day.  
 27 The application form described in section 34-1002, Idaho Code, shall also be  
 28 used for this purpose.

29 (2) For a primary election, an "unaffiliated" elector may select a po-  
 30 litical party affiliation only prior to voting in the primary election. An  
 31 elector may make such selection on or before election day, by declaring such  
 32 political party affiliation to the poll worker or other appropriate election  
 33 personnel. The poll worker or other appropriate election personnel shall  
 34 then record in the poll book the elector's choice. After the primary elec-  
 35 tion, the county clerk shall record the party affiliation so recorded in the  
 36 poll book as part of such elector's record within the voter registration sys-  
 37 tem as provided for in section 34-437A, Idaho Code.

38 SECTION 4. That Section 34-601, Idaho Code, be, and the same is hereby  
 39 amended to read as follows:

40 34-601. DATES ON WHICH ELECTIONS SHALL BE HELD. Elections shall be  
 41 held in this state on the following dates or times:

42 (1) A primary election shall be held on the third Tuesday in May, 2012,  
 43 and every two (2) years thereafter on the above-mentioned Tuesday.

44 (2) A general election shall be held on the first Tuesday after the  
 45 first Monday of November, 2012, and every two (2) years thereafter on the  
 46 above-mentioned Tuesday.

1 (3) Special state elections shall be held on the dates ordered by the  
2 governor's proclamation, or as otherwise provided by law.

3 ~~(4) A presidential primary shall be held on the second Tuesday in March~~  
4 ~~in each presidential election year.~~

5 SECTION 5. That Section 34-713, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 34-713. PREPARATION OF PRIMARY BALLOTS. (1) Upon receipt of the sample  
8 ballot and instructions from the secretary of state, each county clerk shall  
9 print and prepare the official primary ballots for the forthcoming election.  
10 The printing of the ballots shall be a county expense and paid out of the  
11 county treasury ~~except presidential primary ballots, which shall be paid for~~  
12 ~~as provided in section 34-738, Idaho Code.~~

13 (2) Each county clerk shall cause to be published on the earliest date  
14 possible in May the names of all the political party candidates who shall  
15 appear on the primary ~~or presidential primary~~ ballot. The names shall be  
16 listed alphabetically under each particular office title.

17 SECTION 6. That Section [34-731](#), Idaho Code, be, and the same is hereby  
18 repealed.

19 SECTION 7. That Section [34-732](#), Idaho Code, be, and the same is hereby  
20 repealed.

21 SECTION 8. That Section [34-733](#), Idaho Code, be, and the same is hereby  
22 repealed.

23 SECTION 9. That Section [34-734](#), Idaho Code, be, and the same is hereby  
24 repealed.

25 SECTION 10. That Section [34-735](#), Idaho Code, be, and the same is hereby  
26 repealed.

27 SECTION 11. That Section [34-736](#), Idaho Code, be, and the same is hereby  
28 repealed.

29 SECTION 12. That Section [34-737](#), Idaho Code, be, and the same is hereby  
30 repealed.

31 SECTION 13. That Section [34-738](#), Idaho Code, be, and the same is hereby  
32 repealed.

33 SECTION 14. That Section 34-904A, Idaho Code, be, and the same is hereby  
34 amended to read as follows:

35 34-904A. ELIGIBILITY TO VOTE IN PRIMARY ELECTIONS. (1) Except as pro-  
36 vided in subsection (2) of this section, an elector who has designated a  
37 party affiliation shall be allowed to vote only in the primary ~~or presiden-~~  
38 ~~tial primary~~ election of the political party for which such an elector is so  
39 registered.

1 (2) A political party qualified to participate in elections pursuant  
2 to section 34-501, Idaho Code, may, no later than the last Tuesday in the  
3 November prior to a primary ~~or presidential~~ election, notify the secretary  
4 of state in writing that the political party elects to allow, in addition to  
5 those electors who have registered with that political party, any of the fol-  
6 lowing to vote in such party's primary ~~or presidential~~ primary election:

7 (a) Electors designated as "unaffiliated";

8 (b) Electors registered with a different political party qualified to  
9 participate in elections pursuant to section 34-501, Idaho Code. In the  
10 event a state chairman of a political party elects to allow electors to  
11 vote in that party's primary ~~or presidential~~ primary election pursuant  
12 to this paragraph ~~(b)~~, the state chairman shall identify which politi-  
13 cal parties' registrants are allowed to vote in such primary ~~or presi-~~  
14 ~~denial~~ primary election.

15 (3) In the event that more than one (1) political party allows  
16 "unaffiliated" electors to vote in their party's primary ~~or presidential~~  
17 ~~primary~~ election, an "unaffiliated" elector shall designate which political  
18 party's primary ~~or presidential~~ primary election the elector chooses to vote  
19 in by declaring such designation to the poll worker or other appropriate  
20 election personnel, who shall then record in the poll book the elector's  
21 choice. The county clerk shall record such choice as part of the elector's  
22 voting history within the voter registration system as provided for in sec-  
23 tion 34-437A, Idaho Code.

24 (4) In the event no more than one (1) political party allows  
25 "unaffiliated" electors to vote in their party's primary ~~or presidential~~  
26 ~~primary~~ election, an "unaffiliated" elector may designate that political  
27 party's primary ~~or presidential~~ primary election as the election the elector  
28 chooses to vote in by declaring such designation to the poll worker or other  
29 appropriate election personnel, who shall then record in the poll book the  
30 elector's choice. The county clerk shall record such choice as part of the  
31 elector's voting history within the voter registration system as provided  
32 for in section 34-437A, Idaho Code.

33 (5) An "unaffiliated" elector having declared such designation as pro-  
34 vided for in subsection (3) or (4) of this section shall not be permitted to  
35 vote in the primary ~~or presidential~~ primary election of any other party held  
36 on that primary ~~or presidential~~ primary election date.

37 (6) If an "unaffiliated" elector does not declare a choice of political  
38 party's primary ~~or presidential~~ primary election ballot, the elector shall  
39 not be permitted to vote in any political party's primary ~~or presidential~~  
40 ~~primary~~ election but shall receive a nonpartisan ballot when such a ballot is  
41 available.

42 (7) In the event that one (1) or more political parties allow electors  
43 affiliated with a different political party to vote in their primary ~~or pres-~~  
44 ~~idential~~ primary election pursuant to this section, an elector affiliated  
45 with a different political party shall declare to the poll worker or other  
46 appropriate election personnel in which primary ~~or presidential~~ primary  
47 election ballot such elector wishes to vote. The county clerk shall record  
48 such choice as part of the elector's voting history within the voter regis-  
49 tration system as provided for in section 34-437A, Idaho Code.

1       (8) Provided that all other provisions of this act are complied with,  
 2 nothing in this section shall be construed to prohibit an elector desig-  
 3 nated as "unaffiliated" from voting in the primary ~~or presidential primary~~  
 4 election of a different party held in subsequent years. Notwithstanding  
 5 any other provision of this act, if a political party allows "unaffiliated"  
 6 electors to vote in that political party's primary ~~or presidential primary~~  
 7 election pursuant to this section, a vote by an "unaffiliated" elector in  
 8 such primary ~~or presidential primary~~ election shall not change or affect the  
 9 elector's "unaffiliated" designation.

10       SECTION 15. That Section 34-1203A, Idaho Code, be, and the same is  
 11 hereby amended to read as follows:

12       34-1203A.   POSTELECTION AUDIT OF SELECTED BALLOTS.

13       (1) (a) After the completion of all county canvasses for any primary  
 14 or general election, ~~including any presidential primary election,~~ the  
 15 secretary of state shall identify and order a postelection audit of cer-  
 16 tain paper ballots cast in any election, shall immediately post to the  
 17 website of the office of the secretary of state a list of the elections,  
 18 counties, and precincts selected for audit, and shall immediately no-  
 19 tify each affected county clerk and county sheriff of the same. Upon  
 20 receiving such notification, the county sheriff shall immediately  
 21 impound and take into custody the affected ballots pursuant to the pro-  
 22 cedures in chapter 23, title 34, Idaho Code. Upon completion of the  
 23 postelection audit, the ballots shall be resealed and returned to the  
 24 custody of the county clerk, or the county sheriff in the event that the  
 25 ballots are subject to a recount pursuant to chapter 23, title 34, Idaho  
 26 Code.

27       (b) A postelection audit authorized pursuant to paragraph (a) of this  
 28 subsection may be ordered for:

- 29           (i) Any or all federal elections held in Idaho;
- 30           (ii) The election for governor;
- 31           (iii) The statewide office election having the narrowest percent-  
 32 age margin of votes;
- 33           (iv) The statewide ballot question election having the narrowest  
 34 percentage margin of votes; and
- 35           (v) One (1) legislative office election within the county.

36       (c) The precincts selected for audit pursuant to paragraph (a) of this  
 37 subsection shall:

- 38           (i) Be selected by lot by the secretary of state without the use of  
 39 a computer at an open public meeting governed by the provisions of  
 40 chapter 2, title 74, Idaho Code; and
- 41           (ii) Not exceed five percent (5%) of the precincts in the county or  
 42 one (1) precinct, whichever is greater. Provided, however, that  
 43 multiple precincts may be selected in any county if the number of  
 44 ballots from the precincts so selected is less than two thousand  
 45 one hundred (2,100).

46       (d) The secretary of state, in lieu of auditing the early or absen-  
 47 tee ballots from any precincts selected for postelection audit, may  
 48 select days, batches, legislative districts, or tabulation machines  
 49 of early or absentee ballots for audit until the number of ballots se-

1 lected equals or exceeds the number of early or absentee ballots that  
 2 were cast from the precincts selected for postelection audit. Such  
 3 days, batches, legislative districts, or tabulation machines shall be  
 4 selected under the same requirements by which precincts were selected.  
 5 The provisions of this paragraph apply only to a county that:

6 (i) Does not organize the storage of its early or absentee ballots  
 7 by precinct;

8 (ii) Organizes the storage of such ballots by day, batch, legisla-  
 9 tive district, or tabulation machine; and

10 (iii) Publicly reports the election results for early or absen-  
 11 tee ballots by day, batch, legislative district, or tabulation ma-  
 12 chine on the county's website prior to the secretary of state's se-  
 13 lection of precincts to be audited.

14 (2) The secretary of state shall conduct, and the county clerks shall  
 15 facilitate, any postelection audit ordered pursuant to subsection (1) of  
 16 this section. Such an audit shall be open to attendance by news media person-  
 17 nel. By directive issued at least sixty (60) days prior to the election, the  
 18 secretary of state shall determine the procedures by which the postelection  
 19 audit is to be conducted. Such procedures shall be developed in consultation  
 20 with county clerks and shall include provisions allowing each interested  
 21 candidate and political party, and each political committee that publicly  
 22 reported expending money on a ballot question for which the results will be  
 23 audited, to appoint a designated observer. Within the time specified in the  
 24 directive, the secretary of state shall report the results of any postelec-  
 25 tion audits on the website of the office of the secretary of state and to the  
 26 county clerk of each county in which paper ballots were audited.

27 (3) The secretary of state may order additional postelection audits,  
 28 without regard to the election or precinct limitations provided in subsec-  
 29 tion (1) of this section, if he determines that such action is warranted by  
 30 the findings of the audits ordered pursuant to subsection (1) of this sec-  
 31 tion. The secretary of state shall limit such orders for additional post-  
 32 election audits to the types of problems identified by the audits performed  
 33 pursuant to subsection (1) of this section.

34 (4) The office of the secretary of state shall pay for the cost of any  
 35 postelection audits conducted pursuant to this section, including reimburs-  
 36 ing county clerks for any costs associated with facilitating such audits.

37 SECTION 16. That Section 34-1205, Idaho Code, be, and the same is hereby  
 38 amended to read as follows:

39 34-1205. COUNTY BOARD OF CANVASSERS -- MEETINGS. The county board of  
 40 commissioners shall be the county board of canvassers and the county clerk  
 41 shall serve as their secretary for this purpose. The county board of can-  
 42 vassers shall meet within seven (7) days after a primary ~~or presidential pri-~~  
 43 ~~mary~~ election and within ten (10) days after a general election for the pur-  
 44 pose of canvassing the election returns of all precincts within the county.

45 SECTION 17. An emergency existing therefor, which emergency is hereby  
 46 declared to exist, this act shall be in full force and effect on and after  
 47 July 1, 2023.